

House Bill 1249 (AS PASSED HOUSE AND SENATE)

By: Representatives Lewis of the 15th, Martin of the 47th, Millar of the 79th, Stephens of the 164th, Loudermilk of the 14th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, and computation of income taxes, so as to provide for income tax credits for the creation of certain solar energy technology manufacturing jobs; to provide for income tax credits for a limited period of time for certain qualified solar energy expenditures and for certain qualified solar energy research expenses; to provide for definitions; to provide for procedures, conditions, and limitations; to provide for powers, duties, and authority of the state revenue commissioner; to provide for an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, and computation of income taxes, is amended by adding a new Code section to read as follows:

"48-7-40.27.

(a) As used in this Code section, the term:

(1) 'Full-time employee job' and 'full-time job' means employment of an individual which:

(A) Is located in this state at the site of a qualified business or the manufacturing facility resulting therefrom;

(B) Involves a regular work week of 35 hours or more;

(C) Has no predetermined end date; and

(D) Pays at or above the average wage of the county with the lowest average wage in the state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(2) 'Manufacturing equipment' means an essential machine, mechanism, or tool or a component of an essential machine, mechanism, or tool used directly and exclusively in a qualified business's manufacturing operation and that is subject to depreciation

1 pursuant to the Internal Revenue Code of 1986 by the taxpayer carrying on the
2 manufacturing, provided that manufacturing equipment does not include a vehicle that
3 leaves the site of a manufacturing operation for the purpose of transporting persons or
4 property.

5 (3) 'Qualified business' means a solar energy company that establishes a new
6 headquarters in this state or expands an existing headquarters in this state.

7 (4) 'Qualified expenditure' means an expenditure for the purchase of manufacturing
8 equipment made after July 1, 2008, by a taxpayer.

9 (5) 'Qualified research expenses' means qualified research expenses for any qualified
10 business as that term is defined in Section 41 of the Internal Revenue Code of 1986
11 except that all wages paid and all purchases of services and supplies must be for research
12 conducted within the State of Georgia.

13 (6) 'Solar energy company' means a company that has its headquarters in this state and
14 that is engaged in research, development, production, or provision of solar energy
15 technology for the purpose of developing or providing products or processes for the
16 commercial or public purpose of generating electricity, directly or indirectly, by means
17 of the conversion of sunlight by photovoltaic cells or other technology or a person whose
18 headquarters is located in this state and who is engaged in providing services or products
19 necessary for such research, development, production, or provision.

20 (b)(1) Any qualified business that establishes a new headquarters in this state or expands
21 an existing headquarters in this state shall be allowed a tax credit for taxes imposed under
22 this article equal to \$5,500.00 annually per new eligible full-time employee job for five
23 years beginning with the year in which such job is created through year five after such
24 creation. To qualify for a credit under this subsection, the employer must make health
25 insurance coverage available to the employee filling the new full-time job; provided,
26 however, that nothing in this subsection shall be construed to require the employer to pay
27 for all or any part of health insurance coverage for such an employee in order to claim the
28 credit provided for in this subsection if such employer does not pay for all or any part of
29 health insurance coverage for other employees.

30 (2) The number of new full-time jobs to which this subsection shall be applicable shall
31 be determined each month by comparing the number of full-time employees subject to
32 Georgia income tax withholding as of the last payroll period of such month or as of the
33 payroll period during each month used for the purpose of reports to the Department of
34 Labor with the number of such employees for the previous month.

35 (3) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not
36 create new eligibility in any succeeding business entity, but any unused job tax credit

1 under this subsection may be transferred and continued by any transferee of the business
2 enterprise.

3 (4) To qualify for the credit provided under this subsection a new full-time job must be
4 created by the close of the seventh taxable year following the business enterprise's
5 withholding start date. In no event may a credit be claimed under this Code section for
6 more than 3,300 new full-time employee jobs created by any one project; provided,
7 however, that the taxpayer may claim the credits provided by Code Sections 48-7-40 and
8 48-7-40.1 for any such additional jobs if the taxpayer meets the terms and conditions
9 thereof.

10 (c) A tax credit in an amount not to exceed 15 percent of any qualified expenditure is
11 allowed a qualified business which has qualified expenditures in Georgia for the period
12 commencing January 1, 2008, and ending on December 31, 2012.

13 (d) A tax credit in an amount not to exceed 75 percent of the qualified research expenses
14 is allowed a qualified business which has qualified research expenses in Georgia for the
15 period commencing January 1, 2008, and ending on December 31, 2012, provided that the
16 qualified business is allowed a research credit under Section 41 of the Internal Revenue
17 Code of 1986.

18 (e)(1) A qualified business seeking to claim any tax credit provided for under subsection
19 (c) or (d) of this Code section must submit an application to the commissioner for
20 tentative approval of such tax credit between September 1 and October 31 of the year
21 preceding the calendar year for which the tax credit is to be earned. The commissioner
22 shall promulgate the rules and forms on which the application is to be submitted.
23 Amounts specified on such application shall not be changed by the qualified business
24 after the application is approved by the commissioner. Such applications must certify
25 that the qualified business would not have incurred the eligible expenses or expenditures
26 mentioned therein but for the availability of the tax credit. The commissioner shall
27 review such application and shall tentatively approve such application upon determining
28 that it meets the requirements of this Code section.

29 (2) The commissioner shall provide tentative approval of the applications by the date
30 provided in paragraph (3) of this subsection. In no event shall the aggregate amount of
31 tax credits approved by the commissioner for all qualified employers under subsections
32 (c) and (d) this Code section in a calendar year exceed:

33 (A) One million dollars for credits earned in calendar year 2008;

34 (B) One million dollars for credits earned in calendar year 2009;

35 (C) One million dollar for credits earned in calendar year 2010;

36 (D) One million dollars for credits earned in calendar year 2011; and

37 (E) One million dollars for credits earned in calender year 2012.

(3) The department shall notify each qualified business of the tax credits provided by subsections (c) and (d) tentatively that are approved and allocated to such employer by December 31st of the year in which the application was submitted. In the event that the credit amounts on the tax credit applications filed with the commissioner exceed the maximum aggregate limit of tax credits under this subsection, then the tax credits shall be allocated among the qualified business who filed a timely application on a pro rata basis based upon the amounts otherwise allowed by this Code section. Once the tax credit application has been approved and the amount approved has been communicated to the applicant, the qualified business may make qualified expenditures or incur qualified expenses approved for the tax credit at any time during the calendar year following the approval of the application. The qualified business may then apply the amount of the approved tax credit to its tax liability for the tax year or years for which the approved application applies. In the event the qualified business has a tax year other than a calendar year and the calendar year expenses are incurred in more than one taxable year, the credit shall be applied to each taxable year based upon when the expenses were incurred or expenditures made.

(f) Where the amount of any credit allowed under this Code section exceeds a qualified business's liability for such taxes in a taxable year, the excess may be taken as a credit against such qualified business's quarterly or monthly payment under Code Section 48-7-103 or against taxes imposed under Chapter 8 of this title incurred in the construction, expansion, or operation of such qualified business's manufacturing facility. The taxpayer may file an election with the commissioner to take such credit against quarterly or monthly payments under Code Section 48-7-103 that become due before the due date of the income tax return on which such credit may be claimed. In the event of such an election, the commissioner shall confirm with the taxpayer a date, which shall not be later than 30 days after receipt of the taxpayer's election, when the taxpayer may begin to take the credit against such quarterly or monthly payments. Regardless of such election, the taxpayer may at any time request a refund from the commissioner of taxes paid to the state under Chapter 8 of this title, which refund shall be deducted from the amount available to be otherwise credited under this Code section. For any one taxable year the amounts taken as a credit under subsection (b) of this Code section against the qualified business's quarterly or monthly payments under Code Section 48-7-103 or against taxes imposed under Chapter 8 of this title may not in the aggregate exceed \$5,500.00 per eligible full-time employee job. Each employee whose employer receives credit against such qualified business's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application

1 of the credit provided for in this subsection. Credits against quarterly or monthly payments
2 under Code Section 48-7-103 and credits against liability under Code Section 48-7-20
3 established by this subsection shall not constitute income to the taxpayer.

4 (g) No taxpayer shall be authorized to claim a credit for any job, qualified expenditure, or
5 qualified research expense under this Code section if such taxpayer claims a credit for such
6 job, qualified expenditure, or qualified research expense under any other provision of this
7 article.

8 **SECTION 2.**

9 This Act shall become effective upon its approval by the Governor or upon its becoming law
10 without such approval and shall be applicable to all taxable years beginning on or after
11 January 1, 2008.

12 **SECTION 3.**

13 All laws and parts of laws in conflict with this Act are repealed.